American Federation of Labor and Congress of Industrial Organizations

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December 13, 2004

Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 5586

Dear Mr. Norton:

I am writing on behalf of the Florida AFL-CIO in response to the complaint filed against it and other respondents by the Republican Party of Florida. The complaint makes no allegations specific to the Florida AFL-CIO, but broadly asserts that its alleged participation in an "agreement" dated September 3, 2004 and entitled "Florida Victory 2004" violates the Federal Election Campaign Act (the "Act") in numerous ways. That assertion is wrong as a matter of fact and law, and we urge the Commission to find no reason to believe that the Florida AFL-CIO has violated the Act, and to dismiss the complaint as to the Florida AFL-CIO.

As set forth in the attached Declaration of Cynthia Hall[1], the Florida AFL-CIO had virtually no contact with the Florida Democratic Party (FDP) with respect to the "Florida Victory 2004" coordinated campaign plan. Ms. Hall participated in a single telephone call with the FDP regarding such a plan in August; briefly reviewed and signed it around September 1; did not discuss it or show it to anyone; and promptly locked it in a drawer and left it there, undisturbed, until, literally, last Friday, December 10.

As Ms. Hall also relates, the Florida AFL-CIO's political activities during 2004 consisted solely of outreach to its restricted class of members of affiliated unions, executive and administrative employees, and their families. The Florida AFL-CIO undertook no general public communications on election-related activities. Indeed, the complaint does not allege a single instance of any.

[1] We are enclosing a faxed version of the declaration. The original will be filed upon its receipt in my office.

Moreover, the Florida Victory Plan itself on its face solely concerns plans and activities of the FDP, and nowhere mentions the Florida AFL-CIO except on the signature page. In fact, the Florida AFL-CIO undertook none of the activities described in the plan (none of which the plan attributes to it in any event), and neither the version of the plan attached to the complaint nor the version that Ms. Hall signed included the "field and fundraising help levels" referred to on the signature page. Nor did the Florida AFL-CIO contribute any field help; and, in fact, all of its financial contributions to the FDP, a total of $16,000 non-federal, were made before the conference call and the conveyance of the plan to Ms. Hall. At no time did the FDP actually request or suggest that the Florida AFL-CIO engage in any non-restricted class communications or other outreach, nor did they even discuss any.

Under these factual circumstances, the applicable law is straightforward and dispositive that there is no violation. The core allegation of the complaint seems to be that there were unlawful coordination and resulting in-kind contributions to the FDP, in violation of 2 U.S.C. §§ 441a(a)(7) and 441b. However, if a labor organization's communications are confined to its restricted class, as was the case here with the Florida AFL-CIO, the ACT's restrictions on coordination are inapplicable and the labor organization makes no contribution (or expenditure) as a matter of law. *See* 2 U.S.C. §441b(b)(2)(A); 11 C.F.R. §§ 100.81, 100.134, 114.3. Contrary to the assertions in the complaint, this fundamental feature of the Act was not changed by the Bipartisan Campaign Reform Act of 2002.

Moreover, even if the Florida AFL-CIO's participated in devising, discussing and approving the Florida Victory Plan in ways that far exceeded the minimal contact that actually occurred, there would be no resulting coordinating or in-kind contribution within the meaning of the Act. For, a labor organization and a state political party committee lawfully can freely consult about the party's own activities, and the party committee can implement the labor organization's requests or suggestions concerning what the party committee should do.

This analysis of the applicable law is set forth in the final General Counsel's Report that was approved by the Commission in MUR 4291 in 2000. At issue in relevant part was the national AFL-CIO's review and approval of numerous state Democratic Party coordinated campaign plans. The General Counsel recommended that the Commission take no further action. For, as here, the plans did not "make any "unmistakable reference" to, much less request or suggest, any specific communications by the AFL-CIO to the general public"; rather, "[w]here the . . . plans referred to communications to the general public, they referred to the state parties' plans for their *own* communications to the general public" General Counsel's Report at 16 (June 12, 2000) (emphasis in original). And, although the AFL-CIO as well as "individual state AFL-CIO federations . . . had access to volumes of non-public information about [state and national Democratic Party committees'] plans, projects, activities and needs," the General Counsel acknowledged that "under no theory of law, either prior to or after [*FEC v.*] *Christian Coalition*, [52 F. Supp. 2d 45 (D.D.C. 1999),] has coordination of a recipient political committee's own communications with a third party rendered the political committee's communications illegal." Id. at 18, 19.

The same conclusions apply to the facts in the instant case; and here, the Florida AFL-CIO's role with respect to the FDP's coordinated campaign plan was far less engaged and influential than those described in MUR 4291.

Nothing in BCRA altered the law of coordination in this respect. Although BCRA repealed the then-extant regulations concerning coordination, the Commission's post-BCRA coordination regulations exclusively, and properly, concern only a third party's public communications, not those of the political committee involved. See 11 C.F.R. Part 109. Accordingly, there can be no reason to believe that unlawful coordination occurred with respect to the Florida AFL-CIO.

Finally, the complaint's other apparent allegation against the Florida AFL-CIO as a non-party respondent similarly fails. There can be no reason to believe that the Florida AFL-CIO violated 2 U.S.C. § 433 by failing to register as a political committee, for it is not a political committee by virtue of any of the activities described in Ms. Hall's declaration.

In sum, then, there is no reason to believe that the Florida AFL-CIO violated the Act, and we respectfully request that the Commission so conclude and dismiss the complaint against it.

Yours truly,

Laurence E. Gold
Associate General Counsel

Enclosure

cc: Cynthia Hall

FEDERAL ELECTION COMMISSION

MUR 5586

DECLARATION OF CYNTHIA HALL

1. I am the president of the Florida AFL-CIO, which is located at 135 S. Monroe St., Tallahassee, FL 32301. The Florida AFL-CIO is a state central labor body whose affiliates principally include many local unions of national and international unions affiliated with the AFL-CIO. As President, I am the chief executive officer of the Florida AFL-CIO.

2. During 2004 the Florida AFL-CIO undertook various activities concerning federal, state and local elections taking place in Florida. For purposes of the Federal Election Campaign Act, I understand that the "restricted class" of the Florida AFL-CIO within Florida consists of its executive and administrative personnel and their families, and the members of its affiliated unions and their families. All of the Florida AFL-CIO's activities concerning federal elections in 2004 were directed only at this restricted class.

3. Some time during August 2004 I participated in a conference call initiated by the Florida Democratic Party that included representatives of the FDP and several non-party organizations. The FDP stated that it would soon circulate a coordinated campaign plan for the FDP and requested that each organization review and sign it, as well as make financial contributions to the FDP.

4. I subsequently received a document dated September 1, 2004 called "Florida Victory 2004," which appears substantially similar to the September 3, 2004 "Florida Victory 2004" document attached to the complaint in this case. I had never seen the September 3 document until I received it with this complaint.

5. Shortly after I received the document dated September 1, I skimmed it, signed it and sent the signature page with my signature alone on it to the FDP. I did not show it to anyone and did not discuss it with anybody from that time until the November 2 general election. In fact, I put it in a locked drawer in my office, where it remained undisturbed until this past Friday, December 10, when I retrieved it in the course of preparing this declaration.

6. The Florida AFL-CIO had virtually no contact with the FDP from the time I signed the Florida Victory Plan until the November 2 general election. Rather, the Florida AFL-CIO's political activities wholly and independently involved outreach to the restricted class described above. I was neither notified of nor attended any meetings as described on page 1 of the Florida Victory Plan, or any similar meetings or calls, and no other Florida AFL-CIO representative had any such contacts either. At no time did the FDP request,

suggest or otherwise discuss with the Florida AFL-CIO any general public communications or activities by the Florida AFL-CIO.

7. The signature page in each version of the Florida Victory Plan refers to an agreement "to contribute field and fundraising help at the levels ascribed below." Neither document ascribes (or describes) any such levels. The Florida AFL-CIO contributed no field help to the FDP during 2004. The Florida AFL-CIO made non-federal (and no federal) financial contributions to the FDP during 2004 totaling $16,000; all of these preceded the conference call described above and my receipt of the September 1 Florida Victory Plan.

8. I have read the various speculative assertions in the complaint about the role of "non-federal entities" in Florida during 2004. Those assertions are false with respect to the Florida AFL-CIO, which, in fact, the complaint specifically refers to only in its first paragraph.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 13, 2004.

Cynthia Hall

Cynthia Hall